

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

JENNIFER VANDERSTOK, *et al.*,

Plaintiffs,

v.

BLACKHAWK MANUFACTURING GROUP
INC., *et al.*

Intervenor Plaintiffs,

v.

MERRICK GARLAND, in his official
capacity as Attorney General of the United States, *et al.*,

Defendants.

Civil Action No. 4:22-cv-00691-O

JOINT STATUS REPORT

Pursuant to this Court’s Order, Doc. 273 (Nov. 20, 2023), directing the parties to meet and confer and provide a joint status report and overview of how the parties intend to proceed following the remand of this case from the Fifth Circuit, the parties have conferred and have not come to an agreement. They are therefore jointly submitting alternative proposals for this Court’s consideration, laid out more fully below.

Plaintiffs’ and Intervenor-Plaintiffs’ Position: On November 9, 2023, the Fifth Circuit affirmed in part and vacated and remanded in part the judgment of this Court. While the panel agreed with this Court’s decision holding unlawful “(1) ATF’s proposed definition of ‘frame or receiver’ including incomplete frames or receivers; and (2) ATF’s proposed definition of ‘firearm’ including weapon part kits,” it vacated this Court’s order vacating the entire Rule and remanded

to this Court for further consideration of the appropriate scope of the remedy. *VanDerStok v. Garland*, No. 23-10718, 2023 WL 7403413, at **5, 12. Accordingly, Plaintiffs and Intervenor-Plaintiffs request that this Court establish a briefing schedule to resolve the limited question of the appropriate scope of the remedy in this case. To that end, Plaintiffs and Intervenor-Plaintiffs respectfully propose the following briefing schedule:

- December 12, 2023: Plaintiffs' and Intervenor-Plaintiffs' Briefs on Remedy
- January 12, 2024: Defendants' Response
- January 26, 2024: Plaintiffs' and Intervenor-Plaintiffs' Replies

The Government's request that this Court abstain from any further proceedings in this case until after it has decided whether to seek certiorari (and if it does decide to do so, until the Supreme Court has finished dealing with the case) should not be countenanced. As this Court previously found when it granted Plaintiffs a preliminary injunction, the Rule is inflicting irreparable harm each day that the challenged portions remain operative. For example, it is inflicting such severe economic harm on Tactical Machining, Defense Distributed, and BlackHawk as to threaten their continued viability. *See generally* Supp. Decl. of Darren Peters, Sr., Doc. 55-1 (Aug. 31, 2022); Decl. of Daniel Lifschitz, Doc. 103-1 (Oct. 20, 2022); Decl. of Cody Wilson, Doc. 164-1 (Jan. 12, 2023). This existential threat to Plaintiffs' and Intervenor-Plaintiffs' businesses cannot later be recovered as monetary damages against Defendants due to sovereign immunity.¹ Indeed, the Fifth Circuit expedited issuance of the mandate so that this Court could more quickly take jurisdiction over this case and resolve outstanding questions related to the appropriate remedy in this case. *See*

¹ Indeed, the Rule very nearly already put Tactical Machining out of business. *See* Rob Romano (@2Aupdates), X (Oct. 27, 2023, 12:07 PM), <https://twitter.com/2Aupdates/status/1717936074155045346>; Rob Romano (@2Aupdates), X (Oct. 27, 2023, 4:05 PM), <https://x.com/2aupdates/status/1728157833223377006?s=51>.

Unpublished Order, *VanDerStok v. Garland*, No. 23-10718, Doc. 221-1 (5th Cir. Nov. 20, 2023). It would be inappropriate, given the stakes here and the ongoing harm to the parties, to delay consideration of this important issue. And that is true regardless of whether any remedy ordered by this Court is stayed pending appellate review. Every day of delay in adjudicating the merits of the remedy is a day of delay in appellate review of such adjudication and thus of ultimate resolution of the case.

Defendants' Position:

1. The status of this case is as follows. Previously, the Supreme Court stayed this Court's vacatur of the Rule "pending the disposition of the appeal in the United States Court of Appeals for the Fifth Circuit and disposition of a petition for a writ of certiorari, if such a writ is timely sought." *Garland v. VanDerStok*, No. 23A82 (U.S. Aug. 8, 2023) (Supreme Court Stay Order). The conclusive nature of the Supreme Court's ruling was acknowledged most recently by the Fifth Circuit's entry of a stay in *Polymer80 v. Garland*, No. 23-10527 (5th Cir. Nov. 30, 2023), on the basis of the Supreme Court Stay Order.

2. Consistent with the Supreme Court Stay Order—as demonstrated most recently by the Fifth Circuit's *Polymer80* ruling—this Court would need to stay any relief that it might grant until the Supreme Court acts on any timely petition for a writ of certiorari the government may file.

3. At the present juncture, briefing on remedies is unnecessary because the Court would need to stay any remedy that it might grant. Such briefing could also prove to be a waste of the parties' and the Court's resources. For example, if Defendants were to ultimately prevail in the Supreme Court, that would eliminate any need for relief, and no briefing on remedies would

be necessary or appropriate. And at a bare minimum, a Supreme Court decision could be highly relevant to the proper scope of relief.

4. Defendants therefore respectfully propose that they promptly file a status report notifying the Court when they seek Supreme Court review or when the time for seeking such review has expired, whichever occurs first.

5. Plaintiffs' contention that briefing on remedies is necessary at the present juncture because of irreparable harm they will allegedly incur is meritless. As explained above, this Court would need to stay any relief that it might grant until the Supreme Court acts on any timely certiorari petition. And in any event, the Supreme Court entered its Stay Order despite Plaintiffs' arguments that they would suffer irreparable harm if this Court's vacatur were stayed as to them.

6. Additionally, and in the alternative, if the Court were to instead decide that remedial briefing is appropriate at the present juncture, then the schedule proposed by Plaintiffs for such briefing is acceptable to Defendants.

DATED this the 4th day of December, 2023.

Jointly submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2023 a true and correct copy of the foregoing document was served via the Court's CM/ECF system to all counsel of record.

/s/ R. Brent Cooper

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